

## **TREASURY - GENERAL**

### **STATE INVESTMENT COUNCIL**

#### **Common and Preferred Stocks and Issues Convertible into Common Stock of International Corporations and International Equity Exchange-Traded Funds**

#### **Proposed Amendments: N.J.A.C. 17:16-44**

Authorized By: State Investment Council, William G. Clark, Director,  
Division of Investment

Authority: N.J.S.A. 52:18A-91

Calendar Reference: See Summary below for explanation of exception to  
calendar requirement.

Proposal Number: PRN 2006-88

Submit comments by May 19, 2006 to:

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The agency proposal follows:

#### **Summary**

The proposed amendments to N.J.A.C. 17:16-44 are intended to expand the range of international corporate securities in which eligible funds may be invested pursuant to this subchapter. The proposed amendments also make certain non-substantive changes designed to make the subchapter more understandable and consistent with analogous subchapters.

The Council is proposing to delete certain limitations in N.J.A.C. 17:16-44.1 that restrict permissible investments in international corporate securities. Specifically, the Director would no longer be limited to companies incorporated in countries listed on the "Approved List of International Governments" or companies with a minimum capitalization of \$250 million. Instead, the Director would be permitted to invest in the publicly-traded stock of any company incorporated, headquartered or primarily doing

business in a country included in the Morgan Stanley Capital International (MSCI) Equity Index Series for developed markets.

The Council is also proposing to lower the minimum market capitalization of international equity exchange-traded funds or closed-end global, regional or country funds from \$100 million to \$50 million, and to apply this limitation only at the time of purchase.

The Council is proposing to raise the maximum exposure of investments in international corporate securities set forth in N.J.A.C. 17:16-44.3. Specifically, up to 1.5 percent (up from one percent) of the market value of an eligible fund (excluding Common Pension Fund D) may be invested in the stock of any one corporation, and the Director may purchase up to 10 percent (up from five percent) of the total amount of stock of any one corporation.

The overall limitation on equity holdings set forth in N.J.A.C. 17:16-44.3(c) (recodified as N.J.A.C. 17:16-44.3(a) 3) is proposed to be reworded to be consistent with similar language in N.J.A.C. 17:16-41, with similar notification requirements and grace periods as in N.J.A.C. 17:16-41 added.

The overall limitation on international holdings set forth in N.J.A.C. 17:16-44.3(d) is proposed to be amended to include Canadian obligations. The limitation is proposed to also clarify that this limitation applies to indirect holdings of each eligible fund through Common Pension Fund D, but not to the holdings of Common Pension Fund D itself.

To make the subchapter consistent with other analogous subchapters, the Council is proposing to add N.J.A.C. 17:16-44.3(b) to provide for a grace period for investments that comply with the maximum exposure requirements of N.J.A.C. 17:16-44.3 at the time of initial purchase, but exceed these limitations after purchase.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

There will be no social impact from the proposed amendments.

### **Economic Impact**

There will be a positive impact from the proposed amendments on participants in those funds eligible to invest in the stock of international corporations. The amendments expand the scope of international investments in which the Director can invest, while at the same time maintaining limitations to limit the overall risk assumed by any one fund.

### **Federal Standards Statement**

A Federal standards analysis is not required because the investment policy rules of the State Investment Council are not subject to any Federal requirements or standards.

### **Jobs Impact**

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the amendments to this subchapter.

### **Agriculture Industry Impact**

The proposed amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required, since the proposed amendments impose no requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

### **Smart Growth Impact**

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:16-44.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, [permissible investments include stock issued by a company] **the Director may invest and reinvest the moneys of any eligible fund in:**

1. [Incorporated or organized under the laws of a country listed on the Approved List of International Governments approved by the Council pursuant to N.J.A.C. 17:16-20.1(b), or domiciled in a country where the market capitalization of the companies included in the Morgan Stanley Capital International EAFE (MSCI EAFE) Index for that country represent more than 5% of the MSCI EAFE Index] **Stock issued by a company incorporated, headquartered or primarily doing business in a country included in the Morgan Stanley Capital International (MSCI) Equity Index Series for developed markets or another similar index selected by the Director and approved by the Council,**

[2. That has a minimum market capitalization of \$US 250 million.  
Subsequent to purchase, if capitalization falls below \$US 250 million, the investment does not have to be sold;] and **whose**

[3. Whose] stock trades on an exchange or over-the-counter market.

[(b)] **2.** International equity exchange-traded funds or closed-end global, regional or country funds [must have] **with** a minimum market capitalization of \$US [100] **50** million. For the purposes of this subchapter, exchange-traded funds or closed-end global, regional or country funds shall be considered as common stock in determining all applicable limitations contained within this subchapter. **Subsequent to purchase, if capitalization falls below \$US 50 million, the investment does not have to be sold;**

[(c)] **(b)** Notwithstanding the restrictions contained in [this subchapter] **(a) above,** the Council may approve the purchase of common **and preferred** stock[s] and issues convertible into common stock of international corporations or international equity exchange-traded funds or closed-end global, regional or country funds on a case-by-case basis.

[(d)] **(c)** Notwithstanding the [above] restrictions **in (a) above,** the Director may:

1. - 3. (No change.)

4. Purchase [up to one percent of any eligible fund's assets] **stock** in new public offerings of companies without prior approval of the [State Investment] Council provided, however, approval will be sought at the next regularly scheduled Council meeting in the event the security does not subsequently meet the requirements of this subchapter. If approval is not granted, the securities will be sold within three months of the Council's disapproval; and

5. (No change.)

17:16-44.2 [Applicable] **Eligible** funds

(a) [The following funds may invest in common and preferred stock of international corporations pursuant to this subchapter] **For purposes of this subchapter, eligible funds shall include:**

1. - 6. (No change.)

17:16-44.3 Limitations

(a) **At time of initial purchase, the following conditions shall be met:**

**1.** Not more than [one] **1.5** percent of the market value of **the assets of** any [pension] **eligible** fund, **either directly or through Common Pension Fund D,** shall be invested in the common and preferred stock of any one corporation. This [one] **1.5** percent limitation shall not apply to Common Pension Fund D [included in the list of applicable funds in N.J.A.C. 17:16-44.2].

[(b)] **2.** The total amount of stock purchased or acquired of any one corporation shall not exceed [five] **10** percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

[(c)] **3.** The **combined** market value of [international] common and preferred stock and issues convertible into common stock, **both domestic, as permitted in N.J.A.C. 17:16-41, and international, as permitted in this subchapter and in N.J.A.C. 17:16-46,** [that can be] held by [a pension] **an eligible** fund **(other than Common Pension Fund D),** directly or through Common Pension Funds **A and D,** when combined with the market value of common and preferred domestic stock, and issues convertible into such common stocks, permitted under N.J.A.C. 17:16-41], cannot exceed 70 percent of the market value of [a pension] **the assets of the** fund, [with the exception of Common Pension Funds A and D,] subject to such further provisos as are contained in N.J.A.C. 17:16-[41] **67.** **When the combined market value of the common and preferred stock and issues convertible into common stock held by a fund, directly or through Common Pension Funds A and D, reaches or exceeds 68 percent of the market value of the assets of the fund as of the end of a period used for evaluating unit values of participation, then the Council shall be notified at the next regularly scheduled meeting of the Council. When the combined market value of the common and preferred stock and issues convertible into common stock held by the fund, directly or through Common Pension Funds A and D, exceeds 70 percent of the market value of the assets of the fund, then the Division may have a six-month period of grace to reduce the**

**level of participation of the fund below the 70 percent level, except that the period of grace may be extended for additional four month periods with the approval of the Council.**

- [(d)] **4.** The market value of international **common and** preferred [and common] stock[s] and issues convertible into common stock[s] **held by an eligible fund (other than Common Pension Fund D), either directly or through Common Pension Fund D,** when combined with the market value of international government and agency obligations permitted under N.J.A.C. 17:16-20 **and Canadian obligations permitted under N.J.A.C. 17:16-16,** cannot exceed 22 percent of the market value of [a pension] **the assets of such** fund, subject to such further provisos as are contained in N.J.A.C. 17:16-67.

**(b) If, subsequent to initial purchase, the limitations in (a)1 or 2 above are exceeded, then the Council shall be notified at the next regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation of the fund below the maximum levels, except that the period of grace may be extended for additional four-month periods with the approval of the Council.**